Debbie Beadle

From: Melonie Anderson
Sent: Tuesday, June 11, 2013 9:24 AM
To: Debbie Beadle
Subject: FW: My testimony to 6/4/13 hearing
Attachments: Testimony to 6-4-13 ECA hearing.docx

From: Reid Brockway [mailto:waterat@comcast.net]
Sent: Monday, June 10, 2013 7:41 PM
To: Melonie Anderson
Subject: Fwd: My testimony to 6/4/13 hearing

Melonie,

For some reason I cannot find my testimony among the public comments posted to the web page. Would you please add it there?

Thanks,
Reid

-------- Original Message --------
Subject: My testimony to 6/4/13 hearing
Date: Tue, 04 Jun 2013 23:14:09 -0700
From: Reid Brockway <waterat@comcast.net>
To: Melonie Anderson <manderson@sammamish.us>

Melonie,

Attached is my testimony submitted to the final session of the ECA hearing. Please file it as appropriate.

Thanks,
Reid

EXHIBIT NO. CC 94

Testimony to 6/4/2013 ECA hearing
From: Reid Brockway
Subject: Reliance on Decision Table during deliberations

Exhibit 2 in tonight's packet is a so-called "decision table" prepared by Staff that reflects their characterization of, and recommendations on, the various amendments that have been proposed. The Citizens for Sammamish code markup has been addressed as well – those issues collectively under one topic. I believe it is Staff's intention that you largely rely on that table when making your policy decisions. A similar approach was taken with the SMP. I have reviewed the table for the amendments I am most familiar with and find it to be both a distortion and a gross oversimplification of the story as regards many of the underlying issues. For example, it declares the Citizens for Sammamish code markup "not consistent with Best Available Science". It cites no science to back up that assertion, and in fact, most of the changes CFS proposes that involve science in some way ***do*** have solid scientific basis. There are areas like the function of buffers in developed neighborhoods for which no studies have been identified by AMEC or anyone else in this process. But the absence of BAS is not the same as the absence of scientific validity.

I'm going to ask you the same question I asked the Planning Commission. I don't necessarily expect an answer since the process here is not geared for dialogue. But the question is:

> Will the council refer to the public testimony in the course of their deliberations, or will it rely on what Staff has prepared in the form of tables like this and the evaluation forms from the Planning Commission phase?

We asked a similar question of the Planning Commission and ***did*** get an answer. On multiple occasions they assured us that they would revisit public testimony in the course of deliberations. ***But that did not happen.*** At least one commissioner had obviously read the CFS code markup and put forth some amendments as a result. But other than that it was only Staff's version of reality that was on the table for consideration.

I certainly hope that doesn't happen here. Take for example site-specific stream buffer location, i.e., buffer delineation. When Staff declares that to have a negative environmental impact, and creates an evaluation form with an overall negative rating and thereby scuttles this proposed amendment, it displays either an ignorance of the concept or an extreme bias against providing citizens with this flexibility.

Along with this verbal testimony I have submitted written testimony (see below) in which I critique the material in the decision table for those topics where I feel I have significant knowledge. I appeal to the Council to refer to that input when considering these amendments, not just rely on Staff's assessments.

Comments on Exhibit 2, DECISION TABLE, Proposed Amendments to the "Council Review Draft" ECA code

The following are comments on selected topics in the subject table about which I believe I have significant knowledge or perspective.

Topic 3, Site Specific Stream Buffer Locations

Otherwise known as buffer delineation, this is a recognized approach used by other jurisdictions[1] to overcome the problem of one-size-fits-all buffers derived from forest practices that can impose unwarranted restrictions on developed urban neighborhoods. Indiscriminate imposition of these buffers can burden residents with restrictions, costs, and red tape merely because their yards happen to be within arbitrary distances from critical areas, ***in many cases without any true environmental benefit deriving from these restrictions***. This amendment also provides citizens with a workaround for numerous other buffer-related problems in our current code, particularly the many "magic numbers" it contains. In actuality these arbitrary numbers (there are about ninety of them – see PC Exhibit 60) should be reviewed and replaced by results-based requirements. However buffer delineation offers a compromise alternative.

Note that no provisions in the current code allow for reducing buffers to account for actual range of influence. There are ways to reduce buffer width in places, such as through buffer averaging, but the overall area of the buffer is preserved whether it has environmental value or not.

Staff's assertion that the approach is not supported by best available science is a mischaracterization. There is plenty of scientific basis for recognizing barriers to influence on critical areas, such as roads and buildings and changes in topography, as well as, for example, distinguishing the value of a seasonal storm drainage versus a salmon-bearing creek, both of which can fall within the overly broad definition of a Type F stream. No one, AMEC or otherwise, cited studies of critical area buffers in developed urban neighborhoods. The absence of such studies should not be interpreted as basis for not allowing buffer delineation. More to the point, it is likely a reflection of the fact that the science inherent in identifying barriers to influence on critical areas is rather obvious.

If Staff persists in this "not supported by BAS" argument, Staff should be required to cite rigorous scientific studies of critical areas in developed urban neighborhoods showing that buffer delineation is ***not*** a valid approach. It is doubtful that such studies exist[2], much less ones that lead to the conclusion that the approach is not viable.

Note that the reason the Planning Commission did not recommend this amendment is not that it reviewed the science and found it contrary or lacking. It is because Staff prepared an

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[1] References have been provided in prior testimony

[2] I searched for and did not find any

evaluation form strongly biased against it. Council will see this if it will review a redline version of the evaluation form for this amendment, 2-10, that I submitted to the PC. It is Exhibit 210 from the PC phase, but I have sent it directly to the Council today, since the scanned pdf versions of public comments posted to the website can be difficult to read and interpret.

The code required for this amendment is relatively compact and straightforward. Citizens for Sammamish has proposed text for this option in its mark-up of the PC Recommended Draft. It requires the expertise of qualified professionals and identifies the considerations that must be taken into account. The Council should give serious consideration to incorporating this option for its citizens as it solves a myriad of problems.

Topic 5, Allowances for Existing Urban Development and Other Uses

This amendment would reverse a change made by the Planning Commission and reflects a lack of understanding of why that change was made. It is also slightly in error in that the terminology that was replaced was "single detached dwelling unit", not "single family dwelling unit".

The PC recognized that buildings other than single detached dwelling units can both

a) be unnecessarily restricted as to expansion, and
b) constitute barriers to influence on a critical area.

A property owner may want to, for example, expand a duplex, or convert a single-car garage to a double-car garage, and there is no reason why that should be precluded by code if there is no environmental impact. Similarly, substantial buildings like duplexes or garages can be barriers to influence on a critical area every bit as much as single detached residences can. So the changes to "buildings" where they were made in the code was for good reason.

Topic 12, Amend the definition of "development proposal"

There are multiple problems with this. The change as stated does not make sense (editorial matter). The nature of the city attorney's concerns about "unintended effects" is not explained or justified. And no solution is proposed by Staff for the problem this public comment was intended to address.

The obvious issue is that a "development proposal" is not "any activities requiring a permit or other approval from the City of Sammamish relative to the use or development of land", which is the current definition (ref. 21A.15.310). This definition that the proposal for an activity is the activity itself is nonsensical. Presumably a development proposal is something required in a permit application, but that is not stated. Correcting this should have no "unintended consequences" on other areas of the code that rely on this definition.

But the underlying issue is that the sections of the ECA code that define "development standards" for wetlands (21A.50.290) and streams (21A.50.330) impose strict requirements on "development", and the new definition of "development" includes "any project of a permanent

or temporary nature exterior to a building" (ref. 21A.15.XXX). Replacing a shrub or adding a tool shed clearly fall within this definition. This has the effect of imposing constraints and permitting requirements on activities that it was the intention of 21A.50.060 not to burden with these requirements. Staff tells me the intent of sections .290 and .330 is that they pertain only to activities that require a permit, but a) these sections do not so state, b) the definition of "development proposal" does not stipulate this, and c) the code defining work exempt from permit specifically ***excludes*** critical area buffers (ref. 16.20.200), i.e., it says all work in a buffer requires a permit. So presently 21A.50.060 and sections 21A.50.290 and .330 are in conflict and restrictions on activities in buffers are excessive.

This is a problem that thus remains unaddressed and needs to be solved.

Topic 13, Clarify the "lead in language" at the start of SMC 21A.50.260, 290, 300, and 350

This is another aspect of the problem addressed by Topic 12; a literal interpretation of the code puts these sections in conflict with 21A.50.060. Again the argument of "unintended consequences" is used to justify doing nothing about it. That is not reasonable. The code should state explicitly how these sections are to be applied in concert with new section 21A.50.060. Otherwise the public is subject to arbitrary interpretations wherein Staff applies the literal requirements of these other sections and defeats the relief that it was the intent of 21A.50.060 to provide.

Topic 14, Amend the definition of Fish and Wildlife habitat corridor

This new version of the last sentence of this definition is helpful, but it does not solve the main problem addressed by the public comment. That problem is described in depth in the Citizens for Sammamish code mark-up of the PC Recommended Draft in the Elaboration of C4S Comments section at the end – see Fish and wildlife habitat conservation areas and corridors. In brief, definition 21A.14.467 appears to declare stream and wetland buffers as fish and wildlife habitat corridors and does make it clear that these corridors are merely connections between such buffers. Then definition 21A.15.468 declares fish and wildlife habitat corridors fish and wildlife conservation areas. And finally, the requirements for fish and wildlife conservation areas (21A.50.325) are very restrictive, requiring, for example:

> d) In addition to the provisions of SMC 21A.50.060, removal of any native vegetation or woody debris from the habitat conservation area may be allowed only as part of an approved habitat management plan, critical areas study, and/or alteration plan.

If taken literally, we are back to a situation where removing a weed or dead tree requires a plan, study and permit. The net effect is that requirements have been imposed on stream and wetland buffers well in excess of their respective sections of the code, and the benefit of new section 21A.50.060 is nullified. This needs to be corrected, and this latest sentence does not do the job.

Topic 15, Citizens for Sammamish 2-6-13 markup

The blanket declaration that the recommendations from Citizens for Sammamish are generally not consistent with BAS is wholly unsupported and largely untrue. Staff should be requested to supply or cite specific scientific studies with which each recommendation they are challenging is in conflict. Lacking such substantiation, each comment/recommendation should be considered on its own merits. Note that the lack of BAS on a given recommendation is not the same as valid science in conflict with the recommendation.

See testimony CC61A for an accounting of which of these CFS comments do and do not still apply given the changes reflected in the Council Review Draft.